

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED

August 10, 2010

In the Matter of D. A. HARDY, Minor.

No. 296402

Saginaw Circuit Court

Family Division

LC No. 07-031304-NA

UNPUBLISHED

August 10, 2010

In the Matter of R. M. BURNS, Minor.

No. 296458

Saginaw Circuit Court

Family Division

LC No. 07-031268-NA

Before: M. J. KELLY, P.J., and MARKEY and OWENS, JJ.

PER CURIAM.

In these consolidated appeals, respondent appeals as of right the trial court's orders terminating her parental rights to the minor children under MCL 712A.19b(3)(j). Because we conclude there were no errors warranting relief, we affirm.

Respondent first claims that the trial court erred in finding that the evidence clearly and convincingly established a statutory ground for termination under MCL 712A.19b(3)(j), which provides for termination where "[t]here is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent." We review the court's determination for clear error. *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000); MCR 3.977(J).

These proceedings began in August 2009 after respondent's eldest child alleged that her cousins had sexually abused her on multiple occasions over several years.¹ The child disclosed the abuse to her father, a worker who forensically interviewed the child, a police detective who

¹ The children were previously under the court's jurisdiction during 2007, 2008, and 2009 due to respondent's physical abuse of the eldest child.

talked to the child at the hospital, and a protective services worker who observed the forensic interview, and the trial court admitted these disclosures under MCR 3.972(C)(2). In her statements, the child indicated that her older cousins vaginally and orally penetrated her and that respondent was aware of the acts, but did nothing to prevent them. Respondent did not believe the child's allegations until very late in these proceedings and continually denied having any knowledge of the sexual abuse, despite the child's statements indicating otherwise.

Despite some minor differences in the testimony about the child's disclosures, we agree with the trial court that the statements were sufficiently consistent to establish that she was, in fact, sexually abused by her cousins on multiple occasions, and that respondent was aware yet failed to intervene to protect the child. It was clear that the trial court found the witnesses' testimony concerning the child's statements to be credible, particularly the testimony of the neutral witnesses. The court's reliance on the child's statements was reasonable in light of testimony that the child knew the difference between a truth and a lie, was forthcoming, spontaneously disclosed the sexual abuse, did not appear to be influenced or coached, and was not asked leading questions. Recognizing the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it, MCR 2.613(C); *In re Miller*, 433 Mich 331, 337; 455 NW2d 161 (1989), we cannot conclude that the trial court clearly erred in finding that respondent failed to protect the child from the sexual abuse. *Trejo*, 462 Mich at 356-357.² The repeated incidences of abuse suffered by the child while in respondent's care and her unwillingness to believe the child's allegations for a lengthy period of time indicated that she would likely not be able to adequately protect her children from future abuse. Despite respondent's past progress with services, the evidence clearly and convincingly established a reasonable likelihood that the children would be harmed if returned to her home. MCL 712A.19b(3)(j).

Respondent next claims that the court erred in its determination that termination of her parental rights was in the children's best interests. MCL 712A.19b(5). We review the court's determination regarding the child's best interests for clear error. *Trejo*, 462 Mich at 356-357.

Considering the children's need for safety, permanency, and stability in light of their multiple removals from respondent's care and the past physical and sexual abuse in her home, the trial court did not clearly err in determining that termination of her parental rights was in the children's best interests. MCL 712A.19b(5); *Trejo*, 462 Mich at 356-357. It could not be

² We disagree with respondent's argument on appeal that the child should have been called as a witness herself or talked to the judge in chambers to resolve the issue of whether respondent was aware of the sexual abuse. The child's statements regarding the sexual abuse were admitted under MCR 3.972(C)(2), allowing the admission of hearsay statements made by a child under ten years of age regarding acts of child abuse, including sexual abuse where, as here, the court determined at a pretrial hearing "that the circumstances surrounding the giving of the statement provide adequate indicia of trustworthiness." MCR 3.972(C)(2)(a). Under the court rule, the child's statements were admissible regardless of whether the child was available to testify and could be received in lieu of or in addition to the child's testimony. MCR 3.972(C)(2)(a).

reasonably assured that the children would be safe in respondent's care, which was the paramount concern in this case given the past physical and sexual abuse that occurred in her home. Regardless of the fact that the fathers' rights were not terminated, termination of respondent's parental rights was a step toward permanency, especially, as here, where the children had already been repeatedly removed from her care even though she appeared to make progress in services. The trial court did not clearly err in terminating respondent's parental rights. *Trejo*, 462 Mich at 356-357; MCR 3.977(J).

Affirmed.

/s/ Michael J. Kelly
/s/ Jane E. Markey
/s/ Donald S. Owens